

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:15-cv-284-FDW

BRIAN K. LEWIS,)
vs.)
Plaintiff,)
vs.) **ORDER**
NORTH CAROLINA DEPARTMENT OF)
PUBLIC SAFETY, et al.,)
Defendants.)

)

THIS MATTER is before the Court on Plaintiff Lewis' Response to Defendant's Motion for Summary Judgment Limited to Failure to Exhaust Administrative remedies, (Doc. No. 76). In it, he argues that his § 1983 claim is, in fact, exhausted and that Defendant Uhren's Motion for Summary Judgment, (Doc. No. 62), should be denied. However, Plaintiff Lewis then states:

Plaintiff moves this Court pursuant to Federal Rules of Civil Procedure Rule 41 to allow Plaintiff Lewis **voluntary dismissal, without prejudice**. Plaintiff further requests nothing **from any defendant**, and request this Court to award nothing from Plaintiff.

(Doc. No. 76 at 3) (emphasis added).

Plaintiff Lewis goes on to reassert a claim for declaratory judgment against Defendant Uhren for his role in delaying Plaintiff Lewis' medical treatment. (Doc. No. 76 at 4). Plaintiff Lewis also expresses gratitude to Defendant Smith for obtaining treatment for him, which is now complete. (*Id.*). Defendant Uhren does not appear to oppose Plaintiff Lewis' request voluntary dismissal without prejudice. See (Doc. No. 77). None of the other Defendants have addressed Plaintiff's request to voluntarily dismiss without prejudice.

It appears to the Court that Plaintiff Lewis is seeking to voluntarily dismiss the entire action

against all Defendants pursuant to Rule 41. He is cautioned, however, that a voluntary dismissal will terminate and close Plaintiff Lewis' entire case; no declaratory judgment or any other relief will be available.

If Plaintiff Lewis does not wish for the Court to construe his Response, (Doc. No. 76), as a Rule 41 motion to voluntarily dismiss his entire action against all Defendants, Plaintiff Lewis shall file written Objections within **10 days** of this Order. Failure to timely object will result in an order dismissing and closing Plaintiff Lewis' entire case. Defendants may, within **20 days** of this Order, respond to Plaintiff Lewis' request for voluntary dismissal without prejudice.

IT IS THEREFORE ORDERED that:

- (1) Plaintiff Lewis shall file Objections within **10 days** of this Order if he does not want the Court to construe his Response, (Doc. No. 76), as a motion to voluntarily dismiss his entire case pursuant to Rule 41. Failure to do so will result in termination and closure of Plaintiff Lewis' case.
- (2) Defendants may respond to Plaintiff Lewis' motion for voluntary dismissal without prejudice within **20 days** of this Order.

Signed: April 26, 2018



Frank D. Whitney
Chief United States District Judge

